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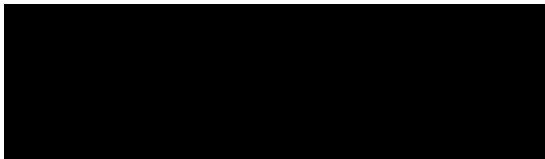


U.S. Citizenship
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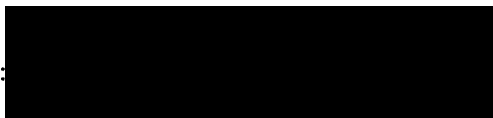
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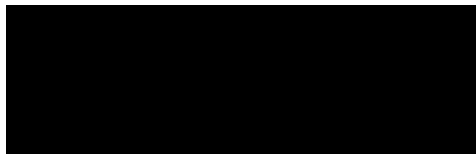
FILE: EAC 02 270 52629 Office: VERMONT SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

For Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is a pediatric medical practice. It seeks to employ the beneficiary as an office manager/administrator. The petitioner, therefore, endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101 (a)(15)(H)(i)(b).

The director denied the petition because the proffered position does not appear to be a specialty occupation. On appeal, counsel asserts that the position is a specialty occupation based on the duties of the position.

Section 214(i)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term "degree" in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The record of proceeding before the AAO contains: (1) Form I-129 and supporting documentation; (2) the petitioner's letter of support, dated August 19, 2002; (3) the director's request for additional evidence; (4) the petitioner's letter, dated September 6, 2002, that responds to the director's request; (5) the director's denial letter; and (6) Form I-290B and supporting documentation. The AAO reviewed the record in its entirety before issuing its decision.

The petitioner is seeking the beneficiary's services as an office manager/administrator. Evidence of the beneficiary's duties includes: the I-129 petition; the director's request for further evidence; and the petitioner's letters in support of the petition and in response to the director's request for further evidence. According to the initial petition, the beneficiary would oversee the day to day operation of the office; prepare schedules and assignments of employees; establish uniform office correspondence procedures and style practices; prepare organizational budget and monthly financial reports; coordinate activities of the personnel; travel to other offices of the petitioner to devise ways and means to improve coordination; ensure compliance with government regulations; hear and settle patients' complaints; and perform other related duties to ensure the smooth operation of the petitioner's business. The petitioner indicated in its letter of support that the position required a baccalaureate degree, preferably in business administration.

The director found that the proffered position was not a specialty occupation and stated that the duties of the position as described by the petitioner did not require a bachelor's degree for entry into the position of office manager. The director referred to the Department of Labor's (DOL) *Occupational Outlook Handbook (Handbook)* classification of office and administrative support supervisors and managers. The director found further that the petitioner failed to establish any of the criteria found at 8 C.F.R. § 214.2(h)(4)(iii)(A).

On appeal, counsel resubmits the petitioner's letter that states the petitioner is presently operating three clinics and now needs the services of a full-time office manager/administrator. Counsel asserts that the position is not that of an ordinary office manager/administrator, as the beneficiary will be overseeing the operation of three separate clinics, and working with doctors, nurses and other medical professionals.

Upon review of the record, the petitioner has established none of the four criteria outlined in 8 C.F.R. § 214.2(h)(4)(iii)(A). Therefore, the proffered position is not a specialty occupation.

The AAO turns first to the criteria at 8 C.F.R. § 214.2 (h)(4)(iii)(A)(1) and (2): a baccalaureate or higher degree or its equivalent is the normal minimum requirement for entry into the particular position; a degree requirement is common to the industry in parallel positions among similar organizations; or a particular position is so complex or unique that it can be performed only by an individual with a degree.

Factors often considered by CIS when determining these criteria include: whether the *Handbook* reports that the industry requires a degree; whether the industry's professional association has made a degree a minimum entry requirement; and whether letters or affidavits from firms or individuals in the industry attest that such firms "routinely employ and recruit only degreed individuals." See *Shanti, Inc. v. Reno*, 36 F. Supp. 2d 1151, 1165 (D.Min. 1999)(quoting *Hird/Blaker Corp. v. Slattery*, 764 F. Supp. 872, 1102 (S.D.N.Y. 1991)).

The AAO routinely consults the *Handbook* for its information about the duties and educational requirements of particular occupations. With regard to the proffered position, it appears to be an administrative office manager position for a medical practice at three locations. The duties of the position are analogous to those outlined in the *Handbook's* classification of office and administrative support worker supervisors and managers. The *Handbook* indicates that most firms fill office and administrative support supervisory and managerial positions by promoting from within, and that many employers require postsecondary training, in some cases, an associate's or even a bachelor's degree. The *Handbook* does not indicate that a baccalaureate degree in a specific specialty is required for entry into the position.

With regard to parallel positions in similar medical practices, the petitioner submitted no further documentation on office managers/administrators positions in medical practices. The record also does not include any evidence from professional associations regarding an industry standard, or documentation to support the complexity or uniqueness of the proffered position. The petitioner has, thus, not established the criteria set forth at 8 C.F.R. § 214.2(h)(4)(iii)(A)(1) or (2).

The AAO now turns to the criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A)(3) – the employer normally requires a degree or its equivalent for the position. The petitioner stated in its letter of support that the proffered position was new. Therefore, the petitioner cannot meet this criterion.

Finally, the AAO turns to the criterion at 8 C.F.R. § 214.2(h)(iii)(A)(4) – the nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree. To the extent that they are depicted in the record, the duties of the position involve work that is routine to any office setting. The fact that the beneficiary would work with three clinics does not necessarily make the duties of the position so specialized and complex as to require the highly specialized knowledge associated with a baccalaureate or higher degree, or its equivalent, in a specific specialty. For example, with regard to the establishment of uniform office correspondence, this duty would be the same for one clinic or for three clinics. Without more persuasive evidence, the petitioner has not established the fourth criterion of 8 C.F.R. § 214.2(h)(4)(iii)(A).

As related in the discussion above, the petitioner has failed to establish that the proffered position is a specialty occupation. Accordingly, the AAO shall not disturb the director's denial of the petition.

Beyond the decision of the director, the petitioner has not established that the beneficiary is qualified to perform the duties of the position, if the position had been determined to be a specialty occupation. The petitioner submitted an educational and work experience evaluation prepared by George R. Fletcher, Globe Language Services, Inc. In this document, Mr. Fletcher stated that the beneficiary had the educational equivalent of a bachelor's degree in law from a regionally accredited U.S. educational institution. He then stated that the beneficiary's fourteen years and ten months of work for the Supreme Court of Peru and the City Hall of Villa Maria del Triunfo in Peru were the equivalent of two years of study in business administration. Without any further analysis, Mr. Fletcher then determined that the beneficiary's law degree and her two years of equivalent study in business administration represented the equivalent of a bachelor's degree in business administration from a regionally accredited U.S. educational institution.

This document is viewed as very problematic. First, there is no evidence presently on the record that the evaluator from Globe Language Services has the authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience, as required by 8 C.F.R. § 214.2(h)(4)(iii)(D)(1). Second, the evaluation is based upon the beneficiary's education, and work experience. A credentials evaluation service may not evaluate an alien's work experience or training; it can only evaluate educational credentials. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(3). Thus, the evaluation carries no weight in these proceedings. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). However, as the AAO is dismissing the appeal on another ground, it will not examine this issue further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.